

III. PRINCIPLES

A. Overview

43. Section 254(b) establishes six principles upon which the Joint Board and the Commission are to base policies for the preservation and advancement of universal service. Section 254(b)(7) allows the Joint Board and the Commission to adopt additional principles necessary for the "protection of the public interest, convenience, and necessity."³¹ In this section, consistent with the Joint Board's recommendation, we adopt the principles identified in section 254(b) and the additional principle of competitive neutrality. We concur with the Joint Board's recommendation "that policy on universal service should be a fair and reasonable balance of all of those principles identified in section 254(b) and the additional principle" of competitive neutrality.³²

B. Background

44. Section 254(b) sets forth principles upon which the Joint Board and the Commission are to base policies for the preservation and advancement of universal service. These principles are:

- (1) QUALITY AND RATES. -- Quality services should be available at just, reasonable, and affordable rates.
- (2) ACCESS TO ADVANCED SERVICES. -- Access to advanced telecommunications and information services should be provided in all regions of the Nation.
- (3) ACCESS IN RURAL AND HIGH COST AREAS. -- Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.
- (4) EQUITABLE AND NONDISCRIMINATORY

³¹ 47 U.S.C. § 254(b)(7).

³² Recommended Decision, 12 FCC Rcd at 101.

CONTRIBUTIONS. -- All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.

(5) SPECIFIC AND PREDICTABLE SUPPORT

MECHANISMS. -- There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.

(6) ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES FOR SCHOOLS, HEALTH CARE, AND LIBRARIES.

-- Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection (h).

(7) ADDITIONAL PRINCIPLES. -- Such other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act.³³

45. In the Recommended Decision, the Joint Board recommended that the Commission's universal service policy "be a fair and reasonable balance" of all of the principles identified in section 254(b) and the additional principle of "competitive neutrality."³⁴ The Joint Board also recommended that the principle of competitive neutrality include the concept of technological neutrality "by allowing the marketplace to direct the development and growth of technology and avoiding endorsement of potentially obsolete services."³⁵ The Joint Board declined to recommend the adoption of additional principles designed to provide support to groups or services not specifically included under section 254.³⁶

C. Discussion

³³ 47 U.S.C. § 254(b).

³⁴ Recommended Decision, 12 FCC Rcd at 101.

³⁵ Recommended Decision, 12 FCC Rcd at 101.

³⁶ Recommended Decision, 12 FCC Rcd at 102-103.

46. Section 254(b)(7) permits the Commission to include among the principles specifically enumerated in section 254(b) "[s]uch other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act."³⁷ Pursuant to section 254(b)(7) and consistent with the Joint Board's recommendation, we establish "competitive neutrality" as an additional principle upon which we base policies for the preservation and advancement of universal service. In adopting this recommendation, we rely upon the Joint Board's reasoning, as set forth immediately below, and incorporate by reference the facts the Joint Board relied upon to support its recommendation.³⁸

47. Consistent with the Joint Board's recommendation, we define this principle, in the context of determining universal service support, as:

COMPETITIVE NEUTRALITY -- Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.

48. We agree with the Joint Board that, as a guiding principle, competitive neutrality is consistent with several provisions of section 254 including the explicit requirement of equitable and nondiscriminatory contributions.³⁹ We also note that section 254(h)(2) requires the Commission to establish competitively neutral rules relating to access to advanced telecommunications and information services for eligible schools, health care providers, and libraries.⁴⁰ The principle of competitive neutrality is also embodied in section 254(e)'s requirement that universal service support be explicit, section 254(f)'s requirement that state universal service contributions be equitable and nondiscriminatory, and section 214(e)'s requirement that any carrier can become an eligible telecommunications carrier if it meets certain statutory criteria.⁴¹ In addition, we agree with the Joint Board that an explicit recognition of competitive neutrality in the collection and distribution of funds and determination of eligibility in universal service support mechanisms is consistent with

³⁷ 47 U.S.C. § 254(b)(7).

³⁸ In adopting various other Joint Board recommendations, as discussed throughout this Order, we hereby expressly rely on the Joint Board's reasoning and incorporate by reference the facts the Joint Board relied upon to support those recommendations.

³⁹ See 47 U.S.C. § 254(d).

⁴⁰ See 47 U.S.C. § 254(h)(2).

⁴¹ See 47 U.S.C. §§ 254(e) - (f), 214(e).

congressional intent and necessary to promote "a pro-competitive, de-regulatory national policy framework."⁴² We recognize, however, that given the complexities and diversity of the telecommunications marketplace it would be extremely difficult to achieve strict competitive neutrality. Our decisions here are intended to minimize departures from competitive neutrality, so as to facilitate a market-based process whereby each user comes to be served by the most efficient technology and carrier. We conclude that competitively neutral rules will ensure that such disparities are minimized so that no entity receives an unfair competitive advantage that may skew the marketplace or inhibit competition by limiting the available quantity of services or restricting the entry of potential service providers.

49. We concur in the Joint Board's recommendation that the principle of competitive neutrality in this context should include technological neutrality.⁴³ Technological neutrality will allow the marketplace to direct the advancement of technology and all citizens to benefit from such development. By following the principle of technological neutrality, we will avoid limiting providers of universal service to modes of delivering that service that are obsolete or not cost effective. The Joint Board correctly recognized that the concept of technological neutrality does not guarantee the success of any technology supported through universal service support mechanisms, but merely provides that universal service support should not be biased toward any particular technologies.⁴⁴ We anticipate that a policy of technological neutrality will foster the development of competition and benefit certain providers, including wireless, cable, and small businesses, that may have been excluded from participation in universal service mechanisms if we had interpreted universal service eligibility criteria so as to favor particular technologies. We also agree with the Joint Board's recommendation that the principle of competitive neutrality, including the concept of technological neutrality, should be considered in formulating universal service policies relating to each and every recipient and contributor to the universal service support mechanisms, regardless of size, status, or geographic location.⁴⁵

50. Commenters who express concern about the principle of competitive neutrality contend that Congress recognized that, in certain rural areas, competition may not always serve the public interest and that promoting competition in these areas must be considered, if

⁴² Joint Explanatory Statement at 113.

⁴³ Recommended Decision, 12 FCC Rcd at 101.

⁴⁴ For example, observing that wireless providers use spectrum shared among users to provide service, the Joint Board found that a wireless carrier provides the equivalent of single-party service when it provides a dedicated message path for the length of a party's particular transmission. Recommended Decision, 12 FCC Rcd at 112.

⁴⁵ Recommended Decision, 12 FCC Rcd at 101.

at all, secondary to the advancement of universal service.⁴⁶ We believe these commenters present a false choice between competition and universal service. A principal purpose of section 254 is to create mechanisms that will sustain universal service as competition emerges. We expect that applying the policy of competitive neutrality will promote emerging technologies that, over time, may provide competitive alternatives in rural, insular, and high cost areas and thereby benefit rural consumers. For this reason, we reject assertions that competitive neutrality has no application in rural areas or is otherwise inconsistent with section 254.

51. We also find no evidence in the record or the legislative history to suggest that the lack of an express reference to competitive neutrality within the provisions of section 254(b) reflects a conscious determination by Congress to exclude this as an additional principle.⁴⁷ Rather, we agree with the Joint Board that promoting competition is an underlying goal of the 1996 Act and that the principle of competitive neutrality is consistent with that goal.⁴⁸ Accordingly, we conclude that the principle of competitive neutrality is "necessary and appropriate for the protection of the public interest" and is "consistent with this Act" as required by section 254(b)(7).⁴⁹

52. We agree with the Joint Board's recommendation that our universal service policies should strike a fair and reasonable balance among all of the principles identified in section 254(b) and the additional principle of competitive neutrality to preserve and advance universal service. Consistent with the recommendations of the Joint Board, we find that promotion of any one goal or principle should be tempered by a commitment to ensuring the advancement of each of the principles enumerated above.

53. We agree with the Joint Board's conclusion that Congress specifically addressed issues relating to individuals with disabilities in section 255⁵⁰ and, therefore, do not establish, at this time, additional principles related to individuals with disabilities for purposes of section 254. Section 255 requires all providers of telecommunications services and manufacturers of telecommunications equipment and customer premises equipment (CPE) to ensure that their equipment and services are accessible to individuals with disabilities, if

⁴⁶ See, e.g., RTC comments at 33.

⁴⁷ Western Alliance comments at 10-11.

⁴⁸ Joint Explanatory Statement at 113.

⁴⁹ 47 U.S.C. § 254(b)(7).

⁵⁰ Recommended Decision, 12 FCC Rcd at 102.

readily achievable.⁵¹ In the *Notice of Inquiry* adopted pursuant to section 255, the Commission sought comment on the implementation and enforcement of section 255.⁵² The Commission also recently released a *Notice of Inquiry* seeking comment on improving telecommunications relay service (TRS) for individuals with hearing and speech disabilities.⁵³ In particular, the *TRS NOI* sought comment on the length of TRS calls⁵⁴ and the effectiveness of existing rules to encourage carriers to distribute specialized customer premises equipment (SCPE) voluntarily at discounted rates or free of charge.⁵⁵ Although we are mindful of the commenters' concerns regarding the affordability of, and access to, telecommunications services by individuals with disabilities, we find that those concerns are more appropriately addressed in the context of the Commission's implementation of section 255.⁵⁶ Therefore, we do not adopt principles related to telecommunications users with disabilities in this proceeding.⁵⁷

54. We have considered the requests to promote access to affordable telecommunications services to other groups and organizations, including minorities and community-oriented organizations,⁵⁸ but we decline to adopt these proposals as additional principles. Rather, consistent with the Joint Board's recommendation, we address the issue of access to affordable telecommunications services by only the particular groups identified by Congress in section 254: low-income consumers; eligible carriers serving rural, insular, and

⁵¹ 47 U.S.C. § 255(b) - (c).

⁵² Implementation of Section 255 of the Telecommunications Act of 1996, *Notice of Inquiry*, WT Docket No. 96-198, FCC 96-382 (rel. Sept. 19, 1996) (*255 NOI*).

⁵³ Telecommunications Relay Services, the Americans with Disabilities Act of 1990, and the Telecommunications Act of 1996, *Notice of Inquiry*, CC Docket No. 90-571, FCC 97-7 (rel. Jan. 14, 1997) (*TRS NOI*).

⁵⁴ *TRS NOI* at para. 41.

⁵⁵ *TRS NOI* at para. 43.

⁵⁶ We note that persons with disabilities who qualify under the low-income provisions of section 254(b)(3) will benefit from universal service support to low-income consumers. We recognize that access to health care and education is vital for all populations, and we anticipate that individuals with disabilities will be among those who will benefit from the provisions of section 254 regarding these services.

⁵⁷ See 47 U.S.C. §§ 225, 255. Section 225 relates to telecommunications services for hearing-impaired and speech-impaired individuals. We also note that interstate TRS, which allows persons with hearing or speech disabilities to communicate with persons who do not have such impairments through the use of a text telephone (TTY), is funded separately from universal service support mechanisms.

⁵⁸ See, e.g., Alliance for Community Media comments at 6-9; Public Advocates comments at 3-5.

high cost areas; and eligible education and health care providers.⁵⁹ Moreover, with respect to ensuring affordable access to telecommunications services for minorities, we conclude below that the states and the Commission will monitor telephone subscribership levels for all Americans, including minorities, in an effort to determine whether we must take additional action to ensure affordable access to telecommunications services.⁶⁰ Accordingly, as recommended by the Joint Board, we decline at this time to adopt additional principles the purpose of which would be to extend universal service support to individuals, groups, or locations other than those identified in section 254.

55. Section 254(b)(4) provides for "equitable and nondiscriminatory contributions,"⁶¹ and section 254(b)(5) provides that support mechanisms should be "specific and predictable."⁶² We find that these principles include the concept of "economic efficiency" to the extent that they promote competition through an open and competitively neutral marketplace, and we therefore find it unnecessary to adopt economic efficiency as an additional principle, as one commenter suggests.⁶³ We also find it unnecessary to designate access to the select services, such as interactive services, that commenters have proposed as additional principles for the Commission's universal service policies.⁶⁴ Instead, we consider, as discussed below, whether, consistent with the principles of the 1996 Act, these services should be included in the definition of universal service.⁶⁵ Finally, we reject proposals to establish a principle to minimize the size and growth of the universal service fund.⁶⁶ Although we take measures in this Order to maintain the size of the universal service support mechanisms at a level that is no higher than necessary to effectuate a comprehensive federal universal service policy, we note that section 254(b)(5) requires the Commission to ensure that there are "predictable and sufficient [f]ederal and [s]tate mechanisms to preserve and

⁵⁹ See section 254(b).

⁶⁰ See *infra* section V.

⁶¹ 47 U.S.C. § 254(b)(4).

⁶² 47 U.S.C. § 254(b)(5).

⁶³ GSA comments at 3.

⁶⁴ See, e.g., Bar of New York comments at 3.

⁶⁵ See *infra* section IV.

⁶⁶ See, e.g., Sprint PCS comments at 2-4; APC reply comments at 1; PCIA reply comments at 27.

advance universal service."⁶⁷ In accordance with this principle, we decline to adopt measures that may restrict our ability to comply with this mandate. Moreover, we anticipate that competition and market-based universal service techniques may eventually limit the size of the support mechanisms by providing affordable, cost-effective telecommunications services in many regions of the nation that are now dependent upon universal service support.

⁶⁷ 47 U.S.C. § 254(b)(5). Consistent with the Joint Board's recommendation, we have sought to limit the services eligible for support to only those core services necessary to comply with the mandates of section 254. *See infra* section IV. We are also maintaining the indexed cap on high cost loop support for the period in which carriers will continue to receive high cost loop support based on the existing mechanisms. *See infra* section VII.